

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

Docket No. 12-015-B-HC

In the Matter of

MORGAN STANLEY  
New York, New York

**AMENDMENT OF CONSENT ORDER**

WHEREAS, on April 2, 2012, Morgan Stanley, New York, New York (“MS”) consented to the issuance of a Consent Order (the “2012 Consent Order”), in recognition of the common goals of the Board of Governors of the Federal Reserve System (the “Board of Governors”), the Federal Reserve Bank of New York (the “Reserve Bank”), MS and its direct and indirect subsidiaries that engaged in the business of servicing residential mortgage loans, including Saxon Mortgage Services, Inc., Fort Worth, Texas (“Saxon”) and its direct and indirect subsidiaries, to ensure that the consolidated organization operates in a safe and sound manner and to ensure that if MS, directly or through any subsidiary, engages in the business of residential mortgage loan servicing in the United States, the consolidated organization is in compliance with all applicable Legal Requirements (as defined in the 2012 Consent Order);

WHEREAS, paragraphs 1 and 2 of the 2012 Consent Order required MS, among other things, to retain an independent consultant to conduct an independent review of certain residential mortgage loan foreclosure actions or proceedings for borrowers who had a pending or completed foreclosure on their primary residence any time from January 1, 2009 to December

31, 2010 for loans serviced by MS, through Saxon (the “In-Scope Borrower Population”), the purposes of which were set forth in paragraphs 1 and 2 of the 2012 Consent Order (the “Independent Foreclosure Review”);

WHEREAS, MS has taken steps to comply with its obligations under paragraphs 1 and 2 of the 2012 Consent Order;

WHEREAS, in the interest of providing the greatest benefit to borrowers potentially affected by the practices at MS addressed in the 2012 Consent Order in a more timely manner than would have occurred under the Independent Foreclosure Review, the Board of Governors and the Office of the Comptroller of the Currency (the “OCC”), within their respective jurisdictions, MS and several other financial institutions with mortgage loan servicing operations have agreed to amend their respective Consent Orders;

WHEREAS, MS and the Board of Governors intend MS’s obligations under paragraphs 1 and 2 of the 2012 Consent Order to be replaced with the obligations specified in this amendment to the 2012 Consent Order (the “Amendment”), and ordered pursuant to section 8(b) of the Federal Deposit Insurance Act, as amended (the “FDI Act”) (12 U.S.C. § 1818(b)), which include (i) making a cash payment in the amount specified herein to a Qualified Settlement Fund for distribution to the In-Scope Borrower Population in accordance with a distribution plan developed by the Board of Governors and the OCC in their discretion and (ii) taking other loss mitigation or other foreclosure prevention actions in the amount specified herein;

WHEREAS, the amount of any payments to borrowers made pursuant to this Amendment to the 2012 Consent Order does not in any manner reflect specific financial injury or harm that may have been suffered by borrowers receiving payments, except as expressly provided for in this Amendment to the 2012 Consent Order, nor do the payments constitute

either an admission or a denial by MS of wrongdoing or a civil money penalty under section 8(i) of the FDI Act (12 U.S.C. § 1818(i));

WHEREAS, the board of directors of MS has provided authorization to Scott Tucker to enter into this Amendment to the 2012 Consent Order on behalf of MS, and to consent to compliance by MS and its institution-affiliated parties, as defined in sections 3(u) and 8(b)(3) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(3)), with each and every applicable provision of the 2012 Consent Order as amended by this Amendment.

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to section 8(b) of the FDI Act (12 U.S.C. § 1818(b)) that the 2012 Consent Order is amended as follows:

1. The recitations of the 2012 Consent Order are not amended.
2. Except as otherwise provided in this paragraph 2, any obligations of MS under paragraphs 1 and 2 of the 2012 Consent Order are hereby terminated, and paragraphs 1 and 2, including their accompanying heading, are stricken and replaced with the following:

**“Payments to Borrowers**

1. (a) Within 15 days of the date of the amendment to this Order (the “Amendment”), MS (defined for purposes of paragraphs 1 and 2 to include MS’s direct and indirect subsidiaries) will make a cash payment that totals \$97 million into a Qualified Settlement Fund (the “Fund”) from which payments will be made pursuant to a distribution plan developed by the Board of Governors and the Office of the Comptroller of the Currency (collectively, the “Regulators”) in their discretion to borrowers whose residential mortgage loan on their primary residence was serviced by MS, through Saxon, and who were subject to a foreclosure action or proceeding that was pending or completed any time from January 1, 2009 to December 31, 2010 (the “In-Scope Borrower Population”).

(b) Prior to MS's cash payment into the Fund required under paragraph 1(a), MS, in coordination with the other financial institutions with mortgage loan servicing operations that also have agreed to amend their respective Orders (collectively the "Participating Servicers"), shall ensure that the Fund is established. The Fund shall be established and is intended to be treated at all times as a Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1 (26 C.F.R. § 1.468B-1). Rust Consulting, Inc. (the "Paying Agent") has been retained by the Participating Servicers for the purpose of distributing payments as directed by the Regulators from the Fund to the Participating Servicers' In-Scope Borrower Population and shall serve as the "administrator" at the direction of the Regulators within the meaning of Treas. Reg. § 1.468B-2(k)(3) (26 C.F.R. § 1.468B-2(k)(3)). The agreements pursuant to which the Participating Servicers retain the Paying Agent shall be subject to the Regulators' prior no objection, and the agreements shall not be amended or modified without obtaining a prior no objection from the Regulators. MS will be responsible for MS's share, among the Participating Servicers, of all administrative costs related to the Fund and the Paying Agent. MS may not use any funds from its payment into the Fund or interest accrued on amounts in the Fund for such costs.

(c) Except as provided in paragraphs 1(f) through (h), MS shall promptly place the In-Scope Borrower Population into categories based upon loan file characteristics as determined by the Regulators (the "Borrower Waterfall").

(d) The Reserve Bank may direct that MS's placement of the In-Scope Borrower Population into the Borrower Waterfall be reviewed independently by MS's internal audit or compliance function. Upon verification by the Reserve Bank, the Reserve Bank will instruct MS to provide the Paying Agent with MS's placement of its In-Scope Borrower

Population within the Borrower Waterfall, and at that time MS's placement of the In-Scope Borrower Population within the Borrower Waterfall shall be deemed final.

(e) The Regulators will determine the specific payment amounts applicable to each category of borrower within the Borrower Waterfall in their sole discretion (the "Distribution Plan") and will direct the Paying Agent to distribute payments from the Fund to the In-Scope Borrower Population in accordance with the Distribution Plan established by the Regulators.

(f) Notwithstanding paragraphs 1(d) and (e), with respect to borrowers in the In-Scope Borrower Population who may have been entitled to protection under Section 521 or Section 533 of the Servicemembers' Civil Relief Act, (the "SCRA"), 50 U.S.C. App. §§ 521 or 533, and borrowers who may not have been in default during the foreclosure process, MS shall either: (i) place the borrower into the applicable category within Borrower Waterfall, which will result in the borrower automatically receiving payments made from the Fund in accordance with the Distribution Plan for such category; or (ii) instruct the independent consultant (the "IC") that MS retained to conduct an independent review of residential mortgage loan foreclosure actions or proceedings for the In-Scope Borrower Population (the "Independent Foreclosure Review") to complete file reviews for such borrowers to determine financial injury related to Sections 521 or 533 or to not being in default. For files reviewed under (ii), the borrower will receive payments from the Fund in amounts specified in the June 21, 2012 Financial Remediation Framework where the IC makes a determination of "harm." For files reviewed under (ii) where the IC makes a determination of "no harm," MS will place the borrower into the next highest Borrower Waterfall category for which such borrower is eligible, which will result in the borrower receiving payment from the Fund in accordance with the Distribution Plan for such category.

(g) Notwithstanding paragraphs 1(d) and (e), with respect to borrowers in the In-Scope Borrower Population who may have been subject to interest rate protections under Section 527 of the SCRA, 50 U.S.C. App. § 527, as part of the Borrower Waterfall placement, MS shall either: (i) place the borrower into the highest category within the Borrower Waterfall for which the borrower is eligible, which will result in the borrower automatically receiving payments from the Fund in accordance with the Distribution Plan for such category; or (ii) instruct the IC to complete file reviews for such borrowers to determine financial injury related to Section 527. For files reviewed under (ii), the borrower will receive payments from the Fund for the actual amount in error, in an amount not less than \$250, where the IC makes a determination of “harm.” For files reviewed under (ii) where the IC makes a determination of “no harm,” MS will place the borrower into the next highest Borrower Waterfall category for which such borrower is eligible, which will result in the borrower receiving payment from the Fund in accordance with the Distribution Plan for such category.

(h) If MS elects to have the IC continue file review work as described in paragraphs 1(f) or (g), the IC review work for such files must be completed prior to the verification specified in paragraph 1(d). If the IC review work is not completed by such time, the Board of Governors may direct payments from the Fund to such borrowers in accordance with the Distribution Plan for the highest category for which such borrower is eligible.

(i) Within three days of the effective date of the Amendment to this Order, MS shall confirm that its IC has provided the Reserve Bank with the most recent data report(s) previously provided by the IC to MS’s board or appropriate board committee(s). Within three days of the effective date of the Amendment to this Order, MS shall confirm that its IC has completed and provided to the Board of Governors additional reporting as specified by the Board

of Governors with information as of December 31, 2012. MS shall also take all reasonable steps to cause its IC to provide any existing information, as requested by the Reserve Bank, to assist the Reserve Bank and the Board of Governors in their analysis and public reporting of Independent Foreclosure Review related activities.

(j) Consistent with existing examination authority, the Reserve Bank maintains the right to obtain and access all existing material, information, records and/or files used or generated by MS and/or its IC (including independent counsel to the IC) in connection with the Independent Foreclosure Review and implementation of the Amendment to this Order.

### **Foreclosure Prevention**

2. (a) By no later than January 7, 2015, MS shall provide loss mitigation or other foreclosure prevention actions (“Foreclosure Prevention”) that totals \$130 million.

(b) MS’s Foreclosure Prevention actions must be in addition to any future consumer relief obligations required of MS in any agreement and/or settlement it enters into with Department of Justice (“DOJ”)/Housing and Urban Development (“HUD”) to address claims similar to those addressed in the DOJ/HUD National Mortgage Settlement (the “NMS”).

(c) Well structured loss mitigation actions should focus on foreclosure prevention, which should typically result in benefitting the borrower. While MS’s actions may be affected by existing investor requirements, MS’s foreclosure prevention actions should reflect the following guiding principles:

(i) preference should be given to activities designed to keep the borrower in the home;

(ii) foreclosure prevention actions should emphasize affordable, sustainable, and meaningful home preservation actions for qualified borrowers;

(iii) foreclosure prevention actions should otherwise provide significant and meaningful relief or assistance to qualified borrowers; and

(iv) foreclosure prevention actions should not disfavor a specific geography within or among states, nor disfavor low and moderate income borrowers, and not discriminate against any protected class of borrowers.

(d) Parent and Non-Bank Subsidiary shall receive credit using the types of creditable activity set forth in the NMS for the following Foreclosure Prevention actions set forth in the NMS:

(i) first lien modifications;

(ii) second lien modifications; and

(iii) short sales/deeds-in-lieu of foreclosure.

(e) For purposes of paragraph 2(d), crediting will be based on the unpaid principal balance of the loan and there are no maximum or minimum restrictions on the amount of any particular activity that is creditable.

(f) MS may also receive credit for other Foreclosure Prevention actions, subject to no objection from the Reserve Bank (including as to participation and conditions governing such participation), including:

(i) interest rate modifications;

(ii) deficiency waivers (measured by the amount of deficiency judgment credited at \$.10 for every dollar);

(iii) other Foreclosure Prevention activities (measured by amounts incurred as owing to investors for such activities and including credit on MS's or its affiliates' loans held-

for-investment calculated using the note rate methodology as used by the Government-Sponsored Enterprises);

(iv) additional Foreclosure Prevention actions that are not expressly specified in this paragraph 2;

(v) the provision of additional cash payments to the Fund (measured as \$7 to \$10 of credit for each \$1 cash commitment); and

(vi) the provision of cash or other resource commitments to borrower counseling or education (measured as \$7 to \$10 of credit for each \$1 cash commitment).

(g) To the extent practicable and without prejudice to overall portfolio management, MS will attempt to prioritize its Foreclosure Prevention actions for the benefit of the In-Scope Borrower Population. However, all Foreclosure Prevention actions benefiting borrowers in the portfolio of MS or its subsidiaries or affiliates, whether or not in the In-Scope Borrower Population and whether held-for-investment or serviced-for-others, shall be eligible for credit towards MS's Foreclosure Prevention actions; provided, the creditable activity occurs on or after January 7, 2013.

(h) By May 15, 2013, MS shall submit to the Reserve Bank a report, in a form and manner acceptable to the Reserve Bank, that details the Foreclosure Prevention actions taken by MS through April 30, 2013 to fulfill its obligations under this paragraph 2 and the amount of credit sought toward fulfilling those obligations. Thereafter, MS shall submit such report every 45 days. Nothing in this paragraph 2(h) shall require MS to report Foreclosure Prevention actions taken during a particular prior period for which MS may in the future seek credit or prohibit MS from seeking credit for the Foreclosure Prevention actions taken by MS during a

later reporting period. Additionally, MS shall document its efforts to prioritize the In-Scope Borrower Population when considering creditable Foreclosure Prevention actions.”

3. Paragraph 3 of the 2012 Consent Order is not amended.

4. Paragraph 4(a) of the 2012 Consent Order is stricken and replaced with the following:

“4. (a) MS shall submit policies and procedures acceptable to the Reserve Bank and reports to the Reserve Bank within the applicable time periods set forth in paragraphs 1, 2 and 3 of this Order.”

5. Paragraph 4(b) of the 2012 Consent Order is not amended.

6. Paragraph 4(c) is stricken and replaced with the following:

“(c) During the term of this Order, the approved policies and procedures shall not be amended or rescinded without the prior written approval of the Reserve Bank.”

7. Paragraph 4(d) of the 2011 Consent Order is stricken and replaced with the following:

“(d) During the term of this Order, MS shall revise the approved policies and procedures as necessary to incorporate new or changes to the Legal Requirements and supervisory guidance of the Board of Governors. The revised policies and procedures shall be submitted to the Reserve Bank for approval at the same time as the progress reports described in paragraph 5 of this Order.”

8. Paragraphs 5 through 26 of the 2012 Consent Order are not amended.

9. Paragraph 27 of the 2012 Consent Order is stricken and replaced with the following:

“27. Except as otherwise provided in this paragraph 27, the Board of Governors hereby agrees to not initiate any further enforcement actions, including for civil money penalties, against

MS and its affiliates, successors and assigns, with respect to (a) the conduct described in the WHEREAS clauses of this Order, (b) the matters addressed in paragraphs 1 through 2 of this Order, including matters relating to the work or findings of the IC or independent legal counsel to the IC, and (c) any other past mortgage servicing and foreclosure-related practices that are addressed by this Order. The preceding release and discharge in paragraph 27(c) applies only with respect to borrowers in the In-Scope Borrower Population. The foregoing release and discharge shall not preclude or affect (i) any right of the Board of Governors (A) to assess a civil money penalty against MS for the conduct addressed in the Order and to determine and ensure compliance with any such penalty action or (B) to determine and ensure compliance with this Order, as amended herein, or (ii) any proceedings brought by the Board of Governors to enforce the terms of the Order, as amended herein.”

10. Paragraph 28 of the 2012 Consent Order renumbered paragraph 29 of the 2012 Consent Order and is otherwise not amended.

11. The following is inserted before paragraph 29 of the 2012 Consent Order as paragraph 28 of the 2012 Consent Order:

“28. In no event shall MS request or require any borrower to execute a waiver of any claims against MS (including any agent of MS) in connection with any payment or Foreclosure Prevention assistance provided pursuant to paragraphs 1 or 2 of this Order. However, nothing herein shall operate to bar MS from asserting in the future in any separate litigation, or as part of a settlement related to MS’s foreclosure and servicing practices, any right that may exist under applicable law to offset the amounts received by a borrower through the distribution process set forth above. Nothing herein shall operate to amend or modify in any respect any preexisting

settlement between MS or an affiliate of MS and a borrower in the In-Scope Borrower Population.”

By Order of the Board of Governors effective this 28th day of February, 2013.

MORGAN STANLEY

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

By: /s/ Scott Tucker  
Scott Tucker  
Managing Director  
and Global Head of Litigation

By: /s/ Robert deV. Frierson  
Robert deV. Frierson  
Secretary of the Board